



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

**EXPEDITED SETTLEMENT AGREEMENT**

**\*\* FILED \*\***

**14 JULY 2020**

**U.S.EPA - REGION IX**

**DOCKET NO:** CAA (112r)-09-2020-0045

**This ESA is issued to:** Bayer HealthCare, LLC  
800 Dwight Way  
Berkeley, CA 94710

**For:** Violation of Section 112(r)(7) of the Clean Air Act.  
**At:** Bayer HealthCare, LLC, 800 Dwight Way, Berkeley, CA 94710

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This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Amy C. Miller, Director, Enforcement and Compliance Assurance Division, and Bayer HealthCare, LLC ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). EPA has obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 2 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

**ALLEGED VIOLATIONS**

Following its May 9, 2019 inspection, EPA alleges Respondent's failure to:

1. Comply with the requirements of 40 C.F.R. § 68.65(d)(1) [Process Safety Information] in that equipment identification is incomplete on some of the P&IDs. For example, the majority of the equipment is identified by number only and do not include a vessel name or description for P&IDs BE62-F-0129, -0130, and -0131. The Inspection Team observed three shut-off valves labeled in the Machinery Room as "King Valve Manual Shut-off" near three glycol chillers. Glycol Chillers 0996E01, 0996E02, and 9096E08 are shown on the Refrigeration System P&ID (No. BE62-F-0128), but none of the king valves are identified to indicate emergency shut-off. Section 5.14.3 of ANSI/IIAR-2-2014 states, "Valves required for emergency shutdown of the system shall be clearly and uniquely identified at the valve itself and in the system schematic drawings."
2. Comply with the requirements of 40 CFR § 68.65(d)(2) [Process Safety Information], in that in during the Facility walk-through, the USEPA Contractor Inspection Team observed inadequate and inconsistent labeling of process piping and equipment in some areas within and outside Building B62 (e.g., Suction Accumulator 0996V01, Glycol Chiller 9096E08 piping, Diffusion Tank 0996PV04, Cooling Towers 0994E01 and 0994E02). Not all piping and valves were labeled to indicate contents, direction of flow, physical state (i.e., liquid or vapor), and pressure level (i.e., high or low), and there were inconsistent distinctive component markers for other system equipment (e.g., receivers, accumulator) as stated in the following RAGAGEPs:

- Section 5.14.5 of ANSI/IIAR 2-2014 states, “[a]ll piping mains, headers and branches shall be identified with the following information”:
  1. “AMMONIA.”
  2. Physical state of the ammonia.
  3. Relative pressure level of ammonia, being low or high as applicable.
  4. Pipe service, which shall be permitted to be abbreviated.
  5. Direction of flow.

The marking system shall either be one established by a recognized model code or standard or one described and documented by the facility owner.”

- Section 3.1 of ASME A13.1-2015 states, “[p]ositive identification of the contents of a piping system shall be by lettered legend, giving the name of the contents in full or abbreviated form. Arrows shall be used to indicate direction of flow. Where flow can be in both directions, arrows in both directions shall be displayed. Contents shall be identified by a legend with sufficient additional details such as temperature, pressure, etc., as are necessary to identify the hazard.”
3. Comply with the requirements of 40 CFR § 68.65(d)(2) [Process Safety Information], in that USEPA Contract Inspection Team observed that the Suction Accumulator 0996V01 tank located next to Shell & Tube Condenser 0996E03 did not include a label to indicate the vessel number or ammonia labeling to indicate its contents in the associated piping. No other placards or labels were observed per the following RAGAGEP:
    - IIAR Bulletin No. 114 §4.2 states, “[c]omponent markers will bear the name of the equipment they identify, e.g., RECEIVER, ACCUMULATOR, RECIRCULATOR, etc. In addition, component markers will be provided with a pressure level designation. Additionally, other information can be provided. Component markers will have BLACK letters on a SAFETY ORANGE field.”
  4. Comply with the requirements of 40 CFR § 68.65(d)(2) [Process Safety Information], in that the USEPA Contractor Inspection Team observed four doors within Building B62 (i.e., the door from the Machinery Room to the Control Room, the door used to exit the Control Room to the outside of Building B62) that were not equipped with panic hardware and two doors that were not side-hinged to swing in the direction of egress for operators exiting the Machinery Room per the following RAGAGEP:
    - ANSI/IIAR 2-2014 §6.10.2 states, “[m]achinery room doors shall be self-closing and tight fitting. Doors that are part of the means of egress shall be equipped with panic hardware and shall be side hinged to swing in the direction of egress for occupants leaving the machinery room. Where the machinery room is not provided with fire sprinklers, doors communicating with the building interior shall be 1-hour fire rated. Doors to the outdoors shall be fire rated where required by the Building Code based on the fire rating required for exterior wall openings.”
  5. Comply with the requirements of 40 CFR § 68.65(d)(2) [Process Safety Information], in that during the facility walk-through, the USEPA Contractor (2)Inspection Team observed the interior and exterior signage on several of the Building B62 doors were not in complete accordance with the following RAGAGEPs. For example, “Caution Slippery When Wet” and “Authorized Personnel Only” signs were posted on the door located on the southwest side of Building B62 and did not include signage such as an NFPA 704 diamond and ammonia warning

placards. Additionally, the NFPA 704 ammonia fire diamond placard on the principal machinery room door, as well as the Ammonia Screw Compressors (0996K01, 0996K02, 0996K03 and 9096K05) and Glycol Chiller 9096E08 placards, incorrectly included a 3-1-0 warning label for outdoor equipment, and instead should include a 3-3-0 warning label to indicate indoor equipment.

- ANSI/IIAR 2-2014 §6.15.1 states, “NFPA 704 Placards. Buildings and facilities with refrigeration systems shall be provided with placards accordance with NFPA 704 and the Mechanical Code.”
  - ANSI/IIAR 2-2014 §17.6 states, “[a]s a minimum requirement for facilities which properly have ammonia detection, signage shall be placed next to the actual audio / visual alarms that identify these alarms as part of the ammonia detection system.”
  - Appendix J of ANSI/IIAR 2-2014 (Informative) suggests that the following caution and warning signs should be present on refrigeration machinery room doors:
    1. Refrigeration Machinery Room
    2. Authorized Personnel Only
    3. Caution – Ammonia R-717
    4. Caution – Eye and Ear Protection Required
    5. NFPA 704 – Ammonia Fire Diamond (Blue-3, Red-3, Yellow-0)”
6. Comply with the requirements of 40 CFR § 68.65(d)(2) [Process Safety Information], in that the Emergency Control Box, E-Stop, and emergency ventilation control switches were mounted on the outside, west-side wall of Building B62 within the fenced-in area of the diffusion tank and cooling towers and not adjacent to the principal machinery room door in accordance with the following RAGAGEPs:
- ANSI/IIAR 2-2014 §6.12.2 states, “[a] clearly identified emergency shut-off switch with a tamper-resistant cover shall be located outside and adjacent to the designated principal machinery room door. The switch shall provide off-only control of refrigerant compressors, refrigerant pumps, and normally closed automatic refrigerant valves located in the machinery room. The function of the switch shall be clearly marked by signage near the controls.”
  - ANSI/IIAR 2-2014 §6.12.2 states, “[a] clearly identified control switch for emergency ventilation with a tamper-resistant cover shall be located outside the machinery room and adjacent to the designated principal machinery room door. The switch shall provide “ON/AUTO” override capability for emergency ventilation. The function of the switch shall be clearly marked by signage near the controls.”

## SETTLEMENT

In consideration of Respondent’s size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of **\$8,100**.

This settlement is subject to the following terms and conditions:

- 1) The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, and consents to the assessment of the penalty as stated above. Respondent waives its rights to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C §7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own attorney's fees and costs, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed above and has sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields). EPA encourages electronic payments, but **alternatively you may send a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of **\$8,100** in payment of the full penalty amount to the following address:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

The payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment. Please send a copy of your payment confirmation and the signed ESA to Donald Nixon at: [nixon.donald@epa.gov](mailto:nixon.donald@epa.gov). Alternatively, you may send the original signed ESA and a copy of the payment to:

Donald Nixon (ENF-2-2)  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

- 2) Pursuant to CAA § 114(a)(1)(B) [42 U.S.C. § 7414(a)(1)(B)] **please provide documentation to USEPA Region 9 describing how each area of identified non-compliance has been addressed.** Such documentation is due to EPA within 30 calendar days of your receipt of this letter. If you have corrected non-compliance and intend to resolve EPA's penalty action through the enclosed ESA, your signature affirms that the listed violations have been corrected. When you return the signed ESA to EPA, please provide documentation describing how each area of identified non-compliance was addressed along with an estimate of the cost you incurred fixing those deficits.


Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed ESA with an attached copy of the payment is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 30 days of the date of Respondent's receipt of the proposed ESA and EPA has not granted an extension of its offer to settle, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT: Bayer HealthCare, LLC

Signature:  Date: June 23, 2020

Name (print): Kingsley Chigbu,

Title (print): Senior Director, Health, Safety, Environment and Security

FOR COMPLAINANT: Environmental Protection Agency

**AMY MILLER-  
BOWEN**

Digitally signed by AMY MILLER-  
BOWEN  
Date: 2020.06.25 10:45:18  
-07'00'

Date: \_\_\_\_\_

Amy C. Miller-Bowen, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region IX

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.

**STEVEN JAWGIEL**

Digitally signed by STEVEN  
JAWGIEL  
Date: 2020.07.13 10:20:01 -07'00'

Date: \_\_\_\_\_

Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA Region IX

**Penalty Calculation**

Corporate Name: Bayer  
Corporate Address:  
Facility Name: Bayer HealthCare, LLC  
Facility Address: 800 Dwight Way, Berkeley, CA 94710

**SUMMARY OF VIOLATIONS:** (See attached Base Penalty Cost Matrix)

40 C.F.R. Part 68.65(d)(1) \$ 600  
40 C.F.R. Part 68.65(d)(2) X 5 \$7,500

Sub-total: \$8,100

**Adjusted Total Penalty:** **\$8,100** (See penalty adjustment calculation chart below)

**PENALTY ADJUSTMENT CALCULATION:**

Facility RMP ID #: 1000 0013 9389  
Program Level: 3  
Number of Employees: 1074

Chemical/Quantity reported: Anhydrous Ammonia: 18,700 lbs.  
Threshold Quantity (TQ): 10,000 lbs.

Times TQ: 1-5

# of Employees	Times TQ for Chemical in process			Multiplier
	1-5	5-10	>10	
0 - 9	0.4	0.6	0.8	Multiplier
10 - 100	0.6	0.8	1.0	
> 100	1.0	1.0	1.0	

**Adjusted Penalty Calculation:** Base/Sub-total x Multiplier

Base Penalty/sub-total = **\$8,100**

Base x Multiplier = \$8,100 (1.0) = **\$8,100** **Final Adjusted Penalty**

## CERTIFICATE OF SERVICE

I hereby certify that on the date below, the foregoing Expedited Settlement Agreement in the matter of *Bayer HealthCare LLC*, CAA(112r)-09-2020-0045, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by electronic mail to:

### RESPONDENT:

Kingsley Chigbu,  
Senior Director, HSES  
Bayer HealthCare, LLC  
[kingsley.chigbu@bayer.com](mailto:kingsley.chigbu@bayer.com)

### COMPLAINANT:

Andrew Helmlinger  
Assistant Regional Counsel  
U.S. EPA – REGION IX  
[helmlinger.andrew@epa.gov](mailto:helmlinger.andrew@epa.gov)

\_\_\_\_\_  
Date

Steven  
Armsey

Digitally signed by  
Steven Armsey  
Date: 2020.07.14  
17:51:11 -07'00'

\_\_\_\_\_  
Steven Armsey  
Regional Hearing Clerk  
Office of Regional Counsel, Region IX